

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No.: **EPCRA-08-2004-0003**

Docket No.: **CERCLA-08-2004-0015**

IN THE MATTER OF:)	
)	
West Valley City)	COMPLAINT AND EXPEDITED
3600 Constitution Blvd)	SETTLEMENT AGREEMENT (CESA)
West Valley City, UT 84119-3720)	
)	
Respondent.)	
_____)	

A. JURISDICTION

1. This Complaint and Expedited Settlement Agreement (“CESA”) is issued to West Valley City (“Respondent”) for violating section 304(a) of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11004(a), and section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9603(a) and their implementing regulations.

2. These sections authorize EPA to bring an action under section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and section 109(a)(1)(A) of CERCLA, 42 U.S.C. § 9609(a)(1)(A) for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of the rules.

3. EPA and the Respondent (collectively referred to as the “parties”) have agreed to the settlement of this matter before the filing of a complaint as authorized by 40 CFR § 22.13(b), and to execute this Consent Agreement pursuant to 40 CFR § 22.18(b)(2) and (3) to simultaneously commence and conclude this matter upon issuance of a final order.

B. ALLEGED VIOLATION

1. Respondent is the owner and operator of an entertainment facility at 3200 South Decker Lake Drive, West Valley City, UT (the “Facility”).

2. On September 15, 2003, from 9:44 a.m. to 12:00 p.m., approximately 750 pounds of anhydrous ammonia was released from Respondent’s Facility due to equipment malfunction.

3. Anhydrous ammonia is a hazardous substance as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) with a reportable quantity ("RQ") of 100 pounds as set forth in 40 C.F.R. Part 302, Table 302.4. Anhydrous ammonia is also an extremely hazardous substance as defined in EPCRA Section 302, 42 U.S.C. § 11002, and as set forth in 40 C.F.R. Part 355. The RQ for anhydrous ammonia under EPCRA and CERCLA is the same.
4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires that a person in charge of a facility, as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the reportable quantity ("RQ"), immediately notify the National Response Center.
5. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), requires the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to immediately notify the State Emergency Response Commission ("SERC") when there has been a release of a hazardous substance or an extremely hazardous substance in an amount equal to or greater than the RQ.
6. Respondent did not immediately notify the National Response Center or the SERC of the anhydrous ammonia release at the Facility as soon as Respondent had knowledge of the release as required, and thus, violated the notification requirements of sections 103(a) of CERCLA, 42 U.S.C. § 9603(a) and 304(a) of EPCRA, 42 U.S.C. § 11004(a).

C. CIVIL PENALTY

1. Pursuant to CERCLA § 109(a)(1)(A), 42 U.S.C. § 9609(a)(1)(A), and EPCRA § 325(b)(C), 42 U.S.C. § 11045(b)(C), EPA has considered the nature, circumstances, extent and gravity of Respondent's violations; the Respondent's prior compliance history; the Respondent's degree of culpability; the Respondent's economic benefit or savings resulting from the violations; the Respondent's ability to pay the proposed penalty; and any other matters that justice requires may be considered, and has determined that an appropriate civil penalty to settle this action is two thousand two hundred thirty five dollars (\$2235.00).
2. Respondent consents and agrees that not more than 30 days after Respondent's receipt of a signed Final Order in this matter, Respondent shall pay a civil penalty in the amount of two thousand two hundred thirty five dollars (\$2235.00) by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

Mellon Bank
EPA Region 8
(Regional Hearing Clerk)
P.O. Box 360859M
Pittsburgh, PA 15251

The check shall reference the name and address of Respondent's facility and the EPA docket number of this action.

3. A **copy of the cashier's or certified check** shall be sent simultaneously to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and

Brenda L. Morris (8ENF-L)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

4. Respondent further agrees and consents that if Respondent fails to pay the penalty amount within 30 days of receipt of the Final Order, interest on the penalty amount shall accrue at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. A late payment charge of fifteen dollars (\$15.00) shall be imposed after the first 30 days that the payment, or any portion thereof, is overdue, with an additional charge of fifteen dollars (\$15.00) imposed for each subsequent 30-day period until the payment due is made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid within 90 days after receipt of the final order.

D. SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

1. Respondent agrees to complete the following SEP and expend at least eight thousand nine hundred forty six dollars (\$8946.00) within sixty days of receipt of a signed Final Order in this matter:
 - a. Respondent shall purchase radio communication devices and radio accessories for emergency response use in West Valley City in accordance with the attached SEP.
 - b. Respondent shall provide Complainant with a SEP Completion Report that includes, but is not limited to, documentation of the itemized costs, and copies of purchase orders and receipts or canceled checks evidencing the total expenditure of the SEP of at least eight thousand nine hundred forty six dollars (\$8946.00); and
 - c. Respondent shall provide certification that the SEP has been fully implemented pursuant to the provisions of this CESA.

2. Respondent hereby certifies that, as of the date of this CESA, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

3. Whether Respondent has complied with the terms of this CESA by purchasing the radio communication devices shall be the sole determination of EPA.

4. In the event that Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEP described in paragraph D.1. a.-c., above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEP expenditure described in paragraph D. 1., above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. If the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty to the United States in the amount of nine thousand dollars (\$9,000).

b. If the SEP has been satisfactorily completed, and Respondent spent less than the amount of money required to be spent for the project, Respondent shall pay to the U.S. Treasury the difference between the amount actually spent on the SEP and eight thousand nine hundred forty six dollars (\$8946.00) within thirty (30) days of written demand by EPA.

c. For failure to submit the SEP Completion Report required by paragraph D.1.b., above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of one hundred dollars (\$100) for each calendar day after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.

d. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph C.2., above. Interest and late charges on stipulated penalties owed shall be paid as stated in the paragraph C.4., above.

E. TERMS AND CONDITIONS

1. Upon completion of the Respondent's signing and submission of this CESA, satisfactory completion of the SEP, and payment of the penalty amount, EPA will take no further action against the Respondent for the alleged violations of EPCRA described in section B, above. EPA does not waive any enforcement action by EPA for any other past, present, or future violations under EPCRA or any other statute.

2. Nothing in this CESA shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CESA.

3. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions for this CESA and to bind the party he represents to the terms and conditions of this CESA.

4. The parties agree to submit this CESA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

5. Each party shall bear its own costs and attorneys fees in connection with this matter.

6. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this CESA pursuant to 40 C.F.R. § 22.15. Upon signing and returning of this CESA to EPA, the Respondent waives the opportunity for a hearing pursuant to Section 554 of the Administrative Procedure Act, 5 U.S.C. §554.

7. This CESA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this CESA. This CESA, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violation alleged in the CESA.

8. If the signed CESA is not returned in correct form by the Respondent to EPA at the above-referenced address, within 15 days of the date of the receipt of this CESA, the CESA is withdrawn, without prejudice to EPA's ability to file additional enforcement actions for the violations identified in this CESA, including an Administrative Complaint against Respondent seeking penalties of up to \$27,500 per day of violation pursuant to Section 325(c), 42 U.S.C. §11045(c).

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 6.30.04

By: David J. Janik
Michael T. Risner, Director
David Janik, Supervisor
Legal Enforcement Program

Date: 6/24/04

By: SIGNED
Martin Hestmark, Director
Technical Enforcement Program

Date: 6-30-04

By: SIGNED
Brenda L. Morris, Attorney
Legal Enforcement Program

WEST VALLEY CITY,

Respondent.

Date: _____

By: Paul D. Isaac

(Print name of authorized agent)

By: SIGNED

(Signature of authorized signature)

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **WEST VALLEY CITY, DOCKET NOs.: EPCRA-08-2004-0003; CERCLA-08-2004-0015** was filed with the Regional Hearing Clerk on July 1, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on July 1, 2004, to:

Nicole Cottle, Senior Attorney
West Valley City
3600 Constitution Blvd
West Valley City, UT 84119-3720

July 1, 2004

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON JULY 1, 2004.**